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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAMBRIDGE PAVERS, INC. Plaintiff, v. ARMORTEC CONSTRUCTION and IAN KILPATRICK a/k/a THOMAS BERRY D/B/A ARMORTEC CONSTRUCTION, Defendants.	CIVIL ACTION NO.________________ **COMPLAINT AND JURY DEMAND**

CAMBRIDGE PAVERS, INC. by its attorneys, Gertner Mandel, LLC, for its complaint against, ARMORTEC CONSTRUCTION and IAN KILPATRICK a/k/a THOMAS BERRY D/B/A ARMORTEC CONSTRUCTION, hereby alleges as follows:

1. Plaintiff, CAMBRIDGE PAVERS, INC., ("Cambridge") is a New Jersey corporation having a business address at Base of Jerome Avenue, Lyndhurst, New Jersey 07071.

2. Upon information and belief, Defendant ARMORTEC CONSTRUCTION is a sole proprietorship or partnership with an address at 204 Voss Avenue, Yonkers, New York 10703.

3. Upon information and belief, Defendant IAN KILPATRICK a/k/a THOMAS BERRY is the owner of ARMORTEC CONSTRUCTION and/or is doing business as ARMORTEC CONSTRUCTION and is an individual with an address at 204 Voss Avenue, Yonkers, New York 10703.

JURISDICTION AND VENUE

4. This is a Civil Action arising under the Federal Trademark Act of 1947, as amended, 15 U.S.C. § 1051, *et. seq.*, the common law of the State of New York, the New York General Business Law § 360, *et. seq.*, and § 349. This Court has subject matter jurisdiction under the provisions of 15 U.S.C. § 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Defendants are transacting and doing business within this judicial district. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTS COMMON TO ALL CAUSES OF ACTION

5. Plaintiff is a leading manufacturer of paving stones in the United States.

6. Plaintiff has used the marks CAMBRIDGE PAVINGSTONES and ARMORTEC since at least as early as 1995 to distinguish its goods.

7. Through its extensive sales and advertising, Plaintiff has developed extensive good will throughout the United States with respect to Plaintiff's marks.

8. Plaintiff is the owner of U.S. Trademark Registration No. 3,094,763.

9. Plaintiff's U.S. Trademark Registration for ARMORTEC is valid, subsisting and incontestable.

10. Plaintiff's ARMORTEC trademark is used in conjunction with what is promoted as its "advanced technology" which protects the colors of the paving stones against fading and keeps the surface smooth, yet skid resistant.

11. Plaintiff's ARMORTEC products are promoted under the slogan: "They'll Look Like New Forever."

12. Plaintiff is the owner of U.S. Trademark Registration No. 3,105,701 for the mark "THEY'LL LOOK LIKE NEW FOREVER." CAMBRIDGE PAVING STONES WITH ARMORTEC & Design, which Trademark Registration is valid, subsisting and incontestable.

13. Plaintiff is the owner of U.S. Trademark Registration No. 3,052,791 for the mark "THEY'LL LOOK LIKE NEW FOREVER." CAMBRIDGE PAVINGSTONES & Design, which Trademark Registration is valid, subsisting and incontestable.

14. Plaintiff is the owner of U.S. Trademark Registration No. 3,210,417 for the mark CAMBRIDGE PAVINGSTONES which Trademark Registration is valid, subsisting and incontestable.

15. Defendants market and sell and offer for sale a variety of concrete and asphalt products and services, including, pavingstones under the name ARMORTEC CONSTRUCTION.

16. To promote the sale of their goods and services, Defendants have advertised and distributed materials which contain exact replicas of Plaintiff's registered trademarks.

17. Defendants are purchasing Plaintiff's products from Plaintiff's authorized distributors and dealers and reselling those products using Plaintiff's marks without authorization to deceive and confuse customers that Defendants are associated with or sponsored by Plaintiff.

18. Defendants are providing services to customers, including installation of Plaintiff's products, and using Plaintiff's trademarks without authorization to deceive and confuse customers into believing that Defendants are representatives of, associated with, or their services are sponsored by Plaintiff.

19. Defendants are using Plaintiff's marks without authorization, to trade on Plaintiff's goodwill, to deceive customers and to cause damage to Plaintiff's reputation, which reputation has been built up over many years through Plaintiff's sales, advertising and marketing efforts and through which Plaintiff and Plaintiff's marks have become well-known in the industry for excellence and quality.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

20. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 19 hereof with the same force and affect as if set forth herein at length.

21. The conduct of Defendants as alleged herein constitutes infringement of Plaintiff's registered trademarks.

22. Defendants' unauthorized activities and infringement are likely to cause confusion or to cause mistake or to deceive the consuming public as to the true source of the goods sold by Defendants.

23. Defendants have full knowledge of Plaintiff's exclusive and long established proprietary rights in and to the trademark but continue to proceed in complete disregard thereof.

24. The activities and conduct of Defendants as alleged herein have damaged Plaintiff and will, unless restrained, further impair the value of Plaintiff's trademarks and the valuable

good will which has been built up in the trademarks, and Plaintiff has no adequate remedy at law.

25. Defendants' actions demonstrate an intentional, willful, and malicious intent to trade on the good will associated with Plaintiff's federally registered trademarks.

26. Defendants have caused and are likely to continue to cause substantial injury to Plaintiff.

27. Due to Defendants' actions alleged herein, Plaintiff is entitled to judgment awarding it preliminary and permanent injunctive relief, treble damages, statutory damages, disgorgement of profits, attorney's fees and costs under 15 U.S.C. §1114, §1116 and §1117, as well as any other relief the Court deems just and equitable.

COUNT II
FALSE DESIGNATION OF ORIGIN

28. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 27 hereof with the same force and affect as if set forth herein at length.

29. Defendant's unauthorized use of the name ARMORTEC and use of replicas of Plaintiff's trademarks tends to falsely represent that Defendants are connected with or that Defendants' activities are authorized by Plaintiff and are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods, or services, or commercial activities by Plaintiff. Any failure of Defendants to maintain acceptable standards of quality and service will reflect adversely on Plaintiff and cause irreparable harm to Plaintiff.

30. Plaintiff has no control over the quality of the goods or services sold or offered for sale by Defendants, and because of the confusion as to the source engendered by Defendants, Plaintiff's valuable good will in respect of its trademarks is at the mercy of Defendants.

31. Said actions of Defendants constitute a violation of 15 U.S.C. § 1125(a) in that such false designations and representations of origin and quality have been and continue to be used on or in connection with goods sold by Defendants or which affect commerce.

32. Defendants' false designation of origin and quality has caused substantial and irreparable damage and injury to Plaintiff, for which Plaintiff has no adequate remedy at law.

33. Defendants' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Plaintiff's federally registered trademarks.

34. Defendants have caused and are likely to continue to cause substantial injury to Plaintiff.

35. Due to Defendants' actions alleged herein, Plaintiff is entitled to judgment awarding it preliminary and permanent injunctive relief, treble damages, statutory damages, disgorgement of profits, attorney's fees and costs under 15 U.S.C. §1114, §1116 and §1117, as well as any other relief the Court deems just and equitable.

COUNT III
DILUTION

36. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 35 hereof with the same force and affect as if set forth herein at length.

37. Defendants' actions constitute a violation of 15 U.S.C. § 1125(c) in that such use of ARMORTEC has caused and will continue to cause dilution of the distinctive quality of Plaintiff's mark ARMORTEC.

COUNT IV
COMMON LAW UNFAIR COMPETITION

38. This count arises under the New York common law of Unfair Competition. Jurisdiction is supplemental to Count I pursuant to U.S.C. § 1367. Venue is proper in this district under 28 U.S.C. § 1391.

39. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 38 hereof with the same force and affect as if set forth herein at length.

40. By Defendants' unauthorized use of the name ARMORTEC and use of replicas of Plaintiff's trademarks, Defendants are guilty of unfair competition in violation of the New York Common Law of Unfair Competition and are likely to cause confusion, mistake or to deceive the public.

41. Defendants' unlawful conduct will continue to damage Plaintiff unless enjoined by this court. Plaintiff has no adequate remedy at law.

42. Due to Defendants' actions alleged herein, Plaintiff is entitled to judgment awarding it preliminary and injunctive relief, treble damages, disgorgement of profits, attorneys' fees, costs, and punitive damages, as well as any other relief the Court deems just and equitable.

COUNT V
NEW YORK STATUTORY UNFAIR COMPETITION

43. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 42 hereof with the same force and affect as if set forth herein at length.

44. Defendants' unauthorized use of the name ARMORTEC and use of replicas of Plaintiff's trademarks in connection with its services creates the likelihood of injury to Plaintiff's

business reputation and good will in direct violation of the New York General Business Law § 360-l.

45. The activities of Defendants alleged herein have caused and, if not enjoined, will continue to cause, irreparable harm to the rights of Plaintiff. Plaintiff has no adequate remedy at law.

46. Due to the actions of Defendants alleged herein, Plaintiff is entitled to judgment awarding it preliminary and injunctive relief as well as any other relief the Court deems just and equitable.

COUNT VI
NEW YORK STATE LAW AGAINST DECEPTIVE ACTS AND PRACTICES

47. Plaintiff repeats and realleges the allegations of Paragraphs 1 through 46 hereof with the same force and affect as if set forth herein at length.

48. Through Defendants' unauthorized use of the name ARMORTEC and use of replicas of Plaintiff's trademarks in connection with its services, Defendants have used and employed deceptive acts or practices in direct violation of the New York General Business Law § 349.

49. The activities of Defendants alleged herein have caused and, if not enjoined, will continue to cause, irreparable harm to the rights of Plaintiff. Plaintiff has no adequate remedy at law.

50. Defendants acted willfully and knowingly in its violation of New York State Law.

51. Due to Defendants' actions alleged herein, Plaintiff is entitled to judgment awarding it preliminary and permanent injunctive relief, treble damages, attorney's fees and costs, as well as any other relief the Court deems just and equitable.

WHEREFORE, Plaintiff prays for judgment that:

(a) Defendants have, by their unauthorized use of Plaintiff's trademarks, infringed the trademarks, used and applied false designations of origin, diluted the distinctive quality of Plaintiff's trademarks, competed unfairly with Plaintiff and have injured Plaintiff's good will and business reputation, in violation of Federal and State Law and have done so willfully all to the detriment of Plaintiff.

(b) Defendants, their agents, servants, employees, successors and assigns and all persons in active concert, privity, or participation with Defendants, be preliminarily and permanently enjoined from infringing upon the Federally registered trademarks of Plaintiff, from using any false designation or false description or representation, from engaging in any act or series of acts which either alone or in combination constitutes deceptive or unfair methods of competition by Defendants with Plaintiff and from otherwise interfering with or injuring the business reputation of Plaintiff, or diluting the distinctive quality of the Plaintiff's trademarks or the good will associated therewith.

(c) Defendants be required to account for and pay over to Plaintiff, Defendants' profits and any damages suffered by Plaintiff as a result of Defendants' acts of trademark infringement, false designation of origin, and unfair competition, together with interest and costs.

(d) Defendants be required to pay to Plaintiff an amount three times the profits of Defendants or damages of Plaintiff.

(e) Defendants be required to pay an award of statutory damages to Plaintiff.

(f) Defendants be required to cease all use of the marks ARMORTEC; "THEY'LL LOOK LIKE NEW FOREVER." CAMBRIDGE PAVING STONES WITH ARMORTEC &

Design; "THEY'LL LOOK LIKE NEW FOREVER." CAMBRIDGE PAVING STONES & Design; and CAMBRIDGE PAVINGSTONES, or any mark confusingly similar to Plaintiff's trademarks.

(g) Defendants be ordered to surrender for destruction all products, signs, labels, advertisements and other materials constituting infringement of Plaintiff's trademarks.

(h) Defendants be required to pay Plaintiff the costs of this action, together with reasonable attorney's fees, costs and disbursements.

(i) Plaintiff be awarded such other and further relief, as this Court deems just and equitable.

DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury on all issues so triable in this matter.

GERTNER MANDEL, LLC

Dated: June 9, 2017

By: ________________________
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